COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL No. 1212 of 2001
(Old No. 438 of 1987)

1. Pradeep Singh Chauhan alias Billu S/o Bheem Singh Chauhan

2. Umesh Singh

Both R/o Kathgodam P.S. Haldwani, Distt. Nainital

.....**Appellants**

Versus

State ....**Opp. Party**

Sri R.S. Sammal & Sri I.S. Mehra, learned counsel for the appellants
Sri Nandan Arya, learned Addl. GA and Sri M.A. Khan, for the State

Approved for reporting
~~Not approved for reporting~~.

Date: July 10, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 1212 of 2001

(Old No. 438 of 1987)

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Dated: July 10,2007

Sri R.S. Sammal & Sri I.S. Mehra, learned counsel for the appellants
Sri Nandan Arya, learned Addl. GA and Sri M.A. Khan, for the State

HON. DHARAM VEER, J.

This criminal appeal has been preferred u/s 374 (2) of Code of Criminal procedure, 1973 (*hereinafter to be referred as Cr.P.C.*) is directed against the judgment and order dated 06.02.1987 passed by Sessions, Judge, Nainital, in Session Trial No. 139 of 1984, State Vs. Pradeep Singh Chauhan & others, whereby the learned Sessions Judge has convicted the appellant Pradeep Singh Chauhan alias Billu u/s 304 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*). and awarded a sentence for seven years R.I. and the appellant Umesh Singh was convicted u/s 304/34 I.P.C. and sentenced for seven years R.I. Appellant Umesh Singh was also convicted u/s 307 IPC and sentenced for five years R.I. and the appellant Pradeep Singh Chauhan alias Billu was also convicted u/s 307/34 IPC and was awarded sentence for five years. Both the sentences were directed to run concurrently.

2. Criminal Appeal No. 1213 of 2001 (Old No. 467 of 1987) Madan Lal @ Shepa Vs. State, filed by the accused Madan lal against the same judgment and order dated 06.02.1987 was abated on 20.8.2003 by the order of this Court due to the death of Madan Lal on 13.10.1999. CJM, Nainital vide his report dated 13.6.2003 also informed that the Madan Lal had died on 13.10.1999.

3. In brief, the prosecution story is this that Shailendra Singh P.W.1 had lodged a report Ex.Ka.1 in Police Chowki, Kathgodam, P.S. Haldwani on 15.10.1983 with the allegations that on 15.10.1983 at about 8:45 in the night, his brother

Narendra Singh Bora along with Jeet Singh, Satish Chandra Joshi & Jaswant Singh were going to see Ramlila. At the gate of the Ramila, appellant Pradeep Singh Chauhan alias Billu, appellant Umesh Singh and one another accused Madan Lal met them. Then his brother Narendra Singh had asked Umesh Singh, why he had beaten the Upendra yesterday. After hearing this, all the three persons namely Pradeep Singh Chauhan, Umesh Singh & Madan Lal started beating the Narendra Singh. Pradeep Singh Chauhan was armed with a knife in his hand and he hit blows with knife to Narendra Singh Bora. Jeet Singh P.W. 2 had tried to save him whereupon he too was assaulted and got injuries with knife. After that, all the three persons had run away from the spot. Narendra Singh Bora had got the injuries and he was serious hence he was sent to the Haldwani Hospital for treatment. This incident was seen by complainant Shailendra Singh Bora, P.W.1 and the other witnesses in the electric light.

4. On the basis of the aforesaid FIR, a Chik Report was prepared. The genuineness of the Chik Report was admitted by the defence counsel. The entry was made in the G.D. i.e. Ex.Ka-26. This FIR was lodged in the Police Chowki, Kathgodam at 9:30 P.M. When the Narendra Singh Bora had reached in the hospital, then he was declared dead and the case was converted u/s 302 IPC. The dead body of Narendra Singh Bora was taken into custody by S.I. Jaibir Singh Rathi P.W.9. He reached the Civil Hospital, Haldwani on the morning of 16.10.1983 and took the dead body in his custody. He prepared Panchayatnama Ex.Ka-20, Photo Lash; Ex.Ka-21, Chalan Lash Ex.Ka-22, a letter for conducting post-mortem, Ex.ka-23 and a seal Ex.Ka-24. After that the post-mortem of the dead body was conducted on 16.10.1983 at 11:00 A.M., the post-mortem report is Ex.Ka-2. Jeet Singh PW.2 was medically examined by the doctor on 15.10.1983 at 9:55 P.M. by Medical Officer, Civil Hospital, Haldwani, the injury repot is Ex.ka-19. During the course of investigation, the I.O. has prepared the site plan i.e. Ex.Ka-4 and he has taken the blood stained clay and the plain clay and sealed

in the two separate boxes and the Fard was prepared i.e. Ex.Ka-5. The information of death of the Narendra Singh was received in the Police Station at 10:05 P.M. on 15.10.1983 and the entry was made in Report No. 57, copy of which is Ex.ka-25. After completing the investigation, the I.O. submitted the charge sheet i.e. Ex.Ka-3 in the court of C.J.M., Nainital.

5. The CJM, Nainital has committed the case to the court of sessions by his order dated 26.7.1984 after complying with the provisions of Section 207 Cr.P.C.

6. The learned Session Judge, Nainital has framed the charge on 11.9.1984 against appellant Pradeep Singh Chauhan u/s 302 IPC and 307 I.P.C. who pleaded not guilty and claim to be tried. The charge against Madan Lal & Umesh Singh was framed on 11.9.1984 u/s 302 r/w 34 IPC and u/s 307 r/w 34 IPC. Who pleaded not guilty and claim to be tried. This charge was amended by Sessions Judge on 29.1.1987 and against Pradeep Singh Chauhan, the charge was framed on 29.1.1987 u/s 307 r/w 34 IPC and against Umesh Singh, the charge was framed u/s 307 IPC. The charge was read over to them who pleaded not guilty and claimed to be tried.

7. The prosecution in order to prove its case examined P.W.1 Shailendra Singh who is the brother of the deceased Narendra Singh and the complainant of the case, P.W.2 Jeet Singh who is the injured witness, P.W.3 Satish Chandra Joshi who is the eye witness, P.W.4 Dr. S.K. Gupta who has conducted the post-mortem of the deceased Narendra Singh, P.W.5 is Subedar Singh who was the I.O., P.W. 6 is the S.I. Dharam Singh who was also the I.O., P.W. 7 is Dr. J.P. Singh who has examined the injured witness, P.W.8 is the Constable Ganesh Ram who has filed the affidavit and P.W.9 is the S.I. Jasbir Singh Rathi who has prepared the Panchayatnama.

8. After that the statement u/s 313 Cr.P.C. of the appellants Pradeep Singh, Umesh Singh and accused Madan Lal were recorded. They denied the allegations made against them

and they have stated that they have been falsely implicated due to enmity. In defence, they have examined one Trilochan Papnai, Peshkar, Tehsil Gadarpur who has also accepted in his statement the dying declaration of the Jeet Singh Ex. Kha-3.

9. After appreciating the entire evidence on record, the learned Sessions Judge, Nainital vide his judgment and order dated 06.02.1987 convicted the appellant Pradeep Singh Chauhan alias Billu u/s 304 I.P.C. and awarded a sentence for seven years R.I. and the appellant Umesh Singh was convicted u/s 304/34 I.P.C. and sentenced for seven years R.I. Appellant Umesh Singh was also convicted u/s 307 IPC and sentenced for five years R.I. and the appellant Pradeep Singh Chauhan alias Billu was also convicted u/s 307/34 IPC and was awarded sentence for five years. Both the sentences were directed to run concurrently. Feeling aggrieved against the said judgment and order dated 06.02.1987, the appellants have filed the present appeal before this Court.

10. I have heard Sri R.S. Sammal and Sri I.S. Mehra, learned counsel for the appellants and Sri Nandan Arya, learned A.G.A. & Sri M.A. Khan, learned brief holder for the State and perused the entire record of the case.

11. The prosecution in order to prove its case examined P.W.1 Shaildendra Singh who has stated that the deceased Narendra Singh was his elder brother and he was also in the service in the army. On 15.10.1983, Narendra Singh had come to Kathgodam on leave and on those days the Ramlila was going in Kathgodam. On 15.10.1983, at about 8:45 P.M., he along with his brother Narendra Singh had reached the Ramlila ground, Kathgodam and the above said Ramlila ground was about 100 paces from his house. At that time, there was sufficient light in the Ramlila ground as in all the sides, electric light was there. At that time, Jaswant Singh, Satish Chandra Joshi & Jeet Singh were also there. At the Ramlila gate, appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal alias Shepa (who has died now and is not appellant in this Appeal) and appellant

Umesh Singh met them. Then his brother Narendra asked Umesh Singh why he had beaten the Upendra yesterday and them all the three persons along with Narendra Singh went towards Ramlila ground while talking and whey they were about 10-15 paces from him, then some hot talks took place between them and then the appellant Billu had caused the injury by knife to Narendra which was hit at the left thigh of the Narendra. After receiving the injury of knife, Narendra ran outside the Ramlila gate and the appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh also ran behind him. Narednra fell down after reaching outside the gate and then the appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh beaten the Narendra by fists and kicks. Then he came forward to save Narendra and Jeet Singh was in the front. Then appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh attacked on Jeet Singh and started to beat him. They have also caused injuries to Jeet Singh by knife. After that, several people had reached there and Narendra was sent to the Haldwani Hospital and he along with the Jeet Singh had come to the house and in the house, he has written a report and that report is Ex.Ka-1. After that he along with Jeet Singh had come in the Kathgodam police chowki where he has lodged the FIR Ex.Ka-1 in the police chowki . From the police chowki, Jeet Singh was sent to civil hospital, Haldwani with one constable. After one hour, he came to know that Narendra had died. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

12. P.W.2 is the Jeet Singh who is the injured witness. He has stated that Pradeep Singh Chauhan allias Billu, Madan Lal alias Shepa and Umesh Singh was known to him. Deceased Narendra Singh was also known to him. His house was near about the Ramlila ground and he was also looking after the management of Ramlila. On 15.10.1983 in the night about 8:30-8:45 P.M., he was present in the Ramlila ground and at that time,

there was sufficient light in the Ramlila ground and around the gate. He was waling at the distance of 10-15 paces from the place of occurrence and then he heard the noise. After hearing the noise, he reached on the spot where he saw that Narendra was running out form the gate and all the three accused were running behind him. After crossing 10-15 paces from the gate, all the three accused persons surrounded Narendra. He tried to intervene and he had asked these accused persons why you do quarrel daily and behind him Jaswant Singh, Shailendra Singh and Satish Chandra Joshi were also there. As he reached close to these persons, then all the three accused rushed on him and appellant Umesh Singh gave a blow of knife to him about 4-5 times and rest of the accused had beaten him by fists and kicks. After receiving the injuries by knife, he sat down on the field. This witness was also cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

13. P.W.3 is the Satish Chandra Joshi who is the eyewitness of the above said incident. He has stated that the accused persons were known to him and they were resident of Kathgodam. On 15.10.1983 in the night, time was about 8:30-9:00 P.M., he was inside the Ramlila ground in the Kathgodam, then the accused persons had met with the Narendra in the Ramlila gate. Narendra Singh was accompanied by Shailendra Singh and Jeet Singh and Jaswant Singh were also present there. He remained present in the ground being a volunteer. At that time, Narendra asked from the accused as to why they had beaten the Upendra. Then these people along with Narendra went inside the ground. When they reached about 10-15 paces from the gate, then the appellant Billu had attacked Narendra by knife which hit at the left thigh of Narendra. The other accused persons were also with the Billu at that time. Then Jeet Singh had tried to intervene and Narendra came out of the gate, but he fell down after going 10-15 paces. Then the Umesh attacked Jeet Singh by knife after leaving the Narendra and thereafter, all the appellants

and Madan Lal had beaten the Narendra by fists and kicks. When other people also reached there, then these accused persons ran away and left the Narendra. Narendra and Jeet Singh had received the injuries by knife. This witness was also cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and believable.

14. P.W.4 is the Dr. S.K. Gupta who has conducted the post-mortem of Narendra Singh. He has stated that on 16.10.1983, he was posted a Medical Officer in Civil Hospital, Haldwani. On that day, the dead body of the Narendra Singh was brought to him by Constable Ganesh Ram and Janardan Joshi at 11:00 A.M. He has also stated the deceased had died about twelve hours before and his age was about 36 years. He found the following ante-mortem injuries on his body:-

1. *Two incised wounds spindle shaped with each crossing over the other, size 3 x 1.5 x 6 cm. lying transversely over the left thigh in the middle 10 cm. below mid of inguinal ligament.*
2. *On opening of the injury, muscles, femoral vessels were found cut and surrounding area had collection of blood. Liver, spleen and kidney were found pale.*

15. As per the opinion of the doctor, the cause of death is shock and hemorrhage due to the above said injuries. He has further stated that the above said two injuries were sufficient for the death in ordinary course of nature. He has further stated that the death of Narendra Singh is possible on 15.10.1983 at 9-9:30 P.M. He has further stated that the above said injuries could be caused by the sharp edged weapon like knife. He has prepared the report i.e. Ex.Ka-2.

16. P.W.5 is the Subedar Singh. He has stated that in 1983, he was posted as Inspector, Haldwani Police Station. On 18.11.1983, the investigation of the case was entrusted to him. He had taken the statements of Upendra Singh and other three accused persons namely Pradeep Singh alias Billu, Umesh Singh and Madan Lal and after completing the investigation, he has submitted the charge sheet on 25.12.1983 against the appellants and another accused. The charge-sheet is Ex.Ka-3.

17. P.W.6 is the Sub-Inspector Dharam Singh. He has stated that in October and November, 1983, he was posted as a Sub-Inspector in Police Chowki, Kathgodam. On 15.10.1983, this case was registered in Police Chowki, Kathgodam at 9:30 P.M. in his presence. He has started the investigation at the same time. He has also stated that for lodging the FIR, injured Jeet Singh had also come in the police station along with Shailendra. After registering the case, he sent injured Jeet Singh to Civil Hospital, Haldwani along with Constable Sri Krishna. Thereafter, he has recorded the statements of Shailendra and Head Constable Tika Ram in the police station. On the same night at 10:30 P.M., he received the death information of Sri Narendra Singh from P.S. Haldwani that at 10:05 P.M. from the Civil Hospital, Haldwani, a memo about the death of Narendra Singh was received. On the basis of this, the case was amended u/s 302 I.P.C. After that he has inspected the spot and prepared the site plain on 16.10.1983 i.e. Ex.ka-4. From the place of occurrence, he has taken the plain clay and blood stained clay in his possession and that were sealed in two separate boxes and the Fard was prepared on the spot i.e.Ex.Ka-5. On the same date, he has recorded the statements of injured Jeet Singh, witnesses Satish Chandra Joshi and Jaswant Singh. On 17.10.1983, he received the post-mortem report of Narendra Singh. On 01.11.1983, he has forwarded the articles connected with this case in a sealed condition for chemical examination. Thereafter, he was transferred from there.

18. P.W. 7 is Dr. J.P. Singh who has stated that on 15.10.1983, he was posted as Medical Officer in Civil Hospital, Haldwani. On the night at 9:55 P.M., he had examined the Jeet Singh. On the person of Jeet Singh, he had found the following injuries:-

1. *Abraded contusion 3 x 2 cm. on right side of the bridge of the noise.*
2. *Abraded contusion 2 cm x 2 cm on left side face near the lateral angle of eye.*
3. *Stab wound .2 cm x .5 cm on right side chest 7 cm below & medial to left nipple. Probing not done. Bleeding present.*
4. *Stab wound 2.5 cm x .5 cm on left side upper part abdomen 11 cm below the left nipple. Probing not done. Bleeding present.*
5. *Stab wound 4 cm x 1 cm. on right side back just above the iliac crest Probing not done. Bleeding present.*

6. *incised wound 7 cm x .5 cm muscle deep on right forearm on posterior side 6 cm below the elbow joint. Bleeding present.*

Dr. J.P. Singh has also stated that injuries No.3, 4 and 5 were kept under observation and the rest of the injuries were simple. All the injuries were fresh. Injuries No. 3, 4, 5, and 6 could be caused by a sharp edged weapon like knife and injury No. 1 and 2 could be caused by some blunt object (Kundala). He has prepared a repot i.e. Ex.Ka-19.

19. P.W.8 is the Constable Ganesh Ram who has filed an affidavit. He has stated that on 15.10.1983, he was posted as a Constable in P.S. Haldwani. He along with sub-inspector had gone to the Civil Hospital, Haldwani where the sub-inspector had prepared the panchayatnama and the dead body was sealed and handed over to Constable Janardan Joshi.

20. P.W.9 is the S.I. Jaibir Singh Rathi who has stated that in October, 1983, he was posted in P.S. Haldwani. On 16.10.1983, he went civil Hospital, Haldwani and he took the dead body of Narendra Singh in his possession and concluded the proceedings. He had prepared the panchayatnama, photo Lash, chalan Lash and letters for conducting post-mortem and the same were proved by him which were in his signatures and is his own handwriting i.e. Ex.Ka-20 to Ex.Ka-23. Specimen of seal was prepared and marked as Ex.Ka-24. After sealing of the dead body of Narendra Singh, he has handed over the same to Constable Janardan Joshi and Ganesh Ram and permitted them to take the body in the post-mortem house.

21. Thereafter, the statements of the appellants Pradeep Singh Chauhan, Umesh Singh and accused Madan Lal u/s 313 of Cr.P.C. were recorded. They have denied the allegations made against them and stated that they have been falsely implicated.

22. In the defence, D.W. 1 Trilichan Papnai, Peshkar, Theshil Gadapur was produced. He has stated that on 15-16.10.1983, he was posted as Naib Tehsildar. On 15.10.1983 in the night at about 11:30 P.M., he received a written letter of the SDM, Haldwani for recording the dying declaration of the injured Jeet Singh at Civil Hospital, Haldwani. On 15/16.10.1983 in the night at 12:20 A.M., he reached the Civil Hospital, Haldwani where he has recorded the dying declaration of Jeet Singh and

before the statement, Jeet Singh was medically examined and Dr. J.P. Singh has given his certificate that he is fit for the statement. After that he has recorded the statement of injured Jeet Singh and whatever Jeet Singh had stated, he had written. After writing the statement, it was read over to the Jeet Singh and after that he had singed on that statement and he has also certified that this statement was recorded by him and statement is before him which was written by him and signed by him and on that, there was signatures of Jeet Singh and Dr. J.P. Singh, which were identified by him. That was marked as Ex.Kha-3. He has further stated that he has taken the statement of Jeet Singh and at that time, he was mentally fit to give the statement.

23. Learned counsel for the appellants had argued that on the basis of the evidence, there is no case made out against the appellants u/s 304 and 307 IPC. I do not find any force in the argument advanced by learned counsel for the appellants. As per the evidence of P.W.1 Shailendra Singh, P.W.2 Jeet Singh, and P.W.3 Satish Chandra Joshi who have stated that appellant Pradeep Singh Chauhan had caused the injury by knife to Narendra which hit at the left thigh of the Narendra. After receiving the injury of knife, Narendra ran outside the Ramlila gate and the appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh also ran behind him. Narenda fell down after reaching out of the gate and then the appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh had beaten the Narendra by fists and kicks. Then appellant Pradeep Singh Chauhan alias Billu, accused Madan Lal and appellant Umesh Singh attacked on the Jeet Singh and started to beat him. They have also caused injuries to Jeet Singh and injury of knife was caused to Jeet Singh by Umesh Singh. Furthermore, the statements of above three witnesses are fully corroborated by the medical evidence of P.W.4 Dr. S.K. Gupta and P.W.5 Dr. J.P. Singh and the medical report of Jeet Singh is Ex.ka.19.

24. In view of the above, it is well established that on 15.10.1983 at about 8:45 P.M. at Ramlila ground, Kathgodam, appellant Pradeep Singh Chauhan alias Billu have caused the injuries on the body of the Narendra Singh by knife and when he has run away from there outside the gate, then he was also beaten by the appellants Pradeep Singh, Umesh Singh and accused Madan Lal by fists and kicks. When the Jeet Singh P.W.2 had tried to rescue him then appellant Umesh had also caused injuries to him by knife and rest of the accused persons have caused injuries to him by first and kicks and at that time, Shailendra Singh, Jeet Singh, Jaswant Singh and Satish Chandra Joshi were also present there and the statements of the above said witnesses are also corroborated by the post-mortem report of the Narendra Singh prepared by Dr. S.K. Gupta P.W.4 and the statement of Dr. J.P. Singh, P.W.7.

25. Thus, is this way, the prosecution has proved its case beyond reasonable doubt against the appellants Pradeep Singh Chauhan and Umesh Singh. On the basis of the evidence discussed above against the appellant Pradeep Singh Chauhan, the offence u/s 304 IPC is proved as he has caused the injuries to Narendra Singh by knife and he has caused these injuries with the intention or knowledge to cause death of Narendra Singh and as per the statement of the Dr. S.K. Gupta, P.W.4, these injuries were sufficient in ordinary course of nature to cause the death. The appellant Umesh Singh was also with him who has also participated for causing the injuries to Narendra Singh along with the Pradeep Singh alias Billu and their common intention was there to cause the injuries. Appellant Umesh Singh has also caused injuries to Narendra Singh by fists and kicks along with the appellant Pradeep Singh Chauhan alias Billu.

26. Appellant Umesh Singh has caused injuries by knife to Jeet Singh with the intention or knowledge that these injuries could cause the death of Jeet Singh and these injuries are sufficient in the ordinary course of nature to cause the death of the Jeet Singh. Appellant Pradeep Singh Chauhan was also with

him who has caused the injuries to him by fists and kicks to Jeet Singh and both the appellants have common intention to kill Jeet Singh by causing the injuries. Thus, it is clear that the appellant Pradeep Singh Chauhan has committed the offence punishable u/s 304 and 307/34 IPC and appellant Umesh Singh has committed an offence punishable u/s 304 r/w 34 IPC and 307 IPC.

27. Hence, the learned Sessions Judge has rightly convicted the appellant Pradeep Singh Chauhan alias Billu u/s 304 I.P.C. and awarded a sentence for seven years R.I. and the appellant Umesh Singh was rightly convicted u/s 304/34 I.P.C. and sentence for seven years R.I. Appellant Umesh Singh was also rightly convicted u/s 307 IPC and sentenced for five years R.I. and the appellant Pradeep Singh Chauhan alias Billu was also rightly convicted u/s 307/34 IPC and was rightly awarded sentence for five years and accordingly the sentences were directed to run concurrently.

28. Therefore, I do not find any irregularity or illegality in the judgment and order dated 06.02.1987 passed by Sessions Judge, Nainital.

29. In view of the above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 6.2.1987 passed by learned Sessions Judge, Nainital as well as the sentence awarded to the appellants is hereby confirmed.

30. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

Dated: July 10,2007

Rajeev Dang